small businesses. (i) The Commission is required to consider the size of a business in relation to the amount of the proposed penalty. This factor reflects the relationship between the size of the business of the person charged and the deterrent effect of civil penalties. In considering business "size," the Commission may look to several factors including the firm's number of employees, net worth, and annual sales. The Commission may be guided, where appropriate, by any relevant financial factors to help determine a violator's ability to pay a proposed penalty including: liquidity factors; solvency factors; and profitability factors.

(ii) The statute requires the Commission to consider how to mitigate the adverse economic impacts on small business violators *only* if those impacts would be "*undue*." What the Commission considers to be "undue" will vary based upon the violator's business size and financial condition as well as the nature, circumstances, extent and gravity of the violation(s). When considering how to mitigate undue adverse economic consequences, the Commission may also follow its Small Business Enforcement Policy set forth at 16 CFR 1020.5.

(b) *Other factors as appropriate*. In determining the amount of any civil penalty to be pursued when a knowing violation of the prohibited acts section of the CPSA, FHSA, or FFA has occurred, the Commission may consider, where appropriate, other factors in addition to those listed in the statutes. Both the Commission and the violator are free to raise any other factors they believe are relevant in determining an appropriate penalty amount. Which, if any, additional factors the Commission considers in determining an appropriate penalty amount, including but not limited to those listed above, will be unique to each case. In all civil penalty matters, any additional factors beyond those enumerated in the statute that the Commission takes into consideration for purposes of determining an appropriate civil penalty amount will be made known to and discussed with the violator. Additional factors which may be considered in an individual case include, but are not limited to, the following:

(1) *Safety/Compliance Program and/or System:* The Commission may consider, for example, whether a violator had at the time of the violation, a reasonable program/or system for collecting and analyzing information related to safety issues, including incident reports, lawsuits, warranty claims, and safety-related issues related to repairs or returns; and whether a violator conducted adequate and relevant premarket and production testing of the product(s) at issue.

(2) *History of noncompliance:* The Commission may consider if the violator has a history of noncompliance with the CPSC and whether a higher penalty should be assessed for repeated noncompliance.

(3) *Economic Gain from Noncompliance:* The Commission may consider whether a firm benefitted economically from a delay in complying with statutory and regulatory requirements.

(4) Failure of the violator to respond in a timely and complete fashion to the Commission's requests for information or remedial action: The Commission may consider whether a violator's failure to respond in a timely and complete fashion to requests from the Commission for information or for remedial action should increase the amount of the penalty.

§ 1119.5 Enforcement notification.

A potential violator will be informed in writing that the Commission believes it is subject to a possible civil penalty. The violator will be able to submit evidence and arguments that it is not subject to such a penalty.

PART 1130—REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS (Eff. June 28, 2010)

EFFECTIVE DATE NOTE: At 74 FR 68676, Dec. 29, 2009, part 1130 was added, effective June 28, 2010.

Sec.